Letters of Administration Pendente Lite limited to the moveables in Singapore be granted to such person as the parties may agree or in default of agreement to such persons as the court may appoint and that such person to hold office for a specified period to be agreed between the parties and in default of such agreement to be determined by the court, and that the Administrator so appointed be empowered to get in all the moveables in Singapore and institute any necessary inquiries for that purpose and to pay estate duty.

The defendants' claim to a *legitime portion* should be made expeditiously and prosecuted with diligently.

Probate of the said Will in respect of all the immoveables is granted to the plaintiffs.

The question of probate in respect of the moveables is adjourned until after the final determination in Indonesia of the application of the defendants for a *legitime portion.*

The parties to have liberty to apply and to restore.

Order accordingly

Solicitors: *L.A.J. Smith; Laycock and Ong.*

CHAN AH YOKE v. EASTERN REALTY CO. LTD.

[D.C.A. (Wee Chong Jin C.J., Kulasekaram & Lai Kew Chai JJ) May 4, 1983]

[Singapore – District Court Appeal No. 23 of 1982]

Landlord and Tenant – Rent-controlled premises – Owner must show he has legal possession of premises to qualify for exemption under Control of Rent (Exemption) Notification 1980, para. 2(a) – Control of Rent Act (Cap. 266), section 30.

Interpretation – Construction of Statute – Exception to general rule not to import words into statutes – "Unavoidably necessary to imply words" to prevent manifest injustice or absurdity – Scope of Control of Rent (Exemption) Notification 1980, para. 2(a).

The present appeal involved the construction of the Control of Rent (Exemption) Notification, 1980, para. 2(a) which reads:

"The following domestic premises are exempted from the provisions of the Act [Control of Rent Act]:– (a) any domestic premises which (at any time after the commencement of this Notification) have not for any period been occupied by the owner or let to a tenant".

The respondents' contention which found favour with the court below was that the words of paragraph 2(a) are plain, clear and unambiguous. Their plain meaning is that any domestic premises which, after October 24, 1980, have not for any period of time been occupied by the owner *or* which, after October 24, 1980, have not for any period of time been let to a tenant are exempted from the provisions of the Control of Rent Act (Cap. 266) (the Act). If the said contention were correct, then the respondents were entitled to possession of 194 Kim Seng Road, Singapore, on the undisputed facts of the case that the appellant in occupation of the premises was the widow of a deceased statutory tenant who had been for 28 years the contractual tenant of the premises which were erected before September 1947 and thus were premises subject to the provisions of the Act.

Held, allowing the appeal: (1) the general rule of construction is not to import into statutes words which are not found there unless it is necessary to do so to give the paragraph sense and meaning in its context;

(2) in construing paragraph 2(a) of the said Notification it is unavoidably necessary to imply the words "in the possession of the owner" after the word "Notification". A literal construction of paragraph 2(a) without the words implied will exempt any domestic premises which after October 24, 1980 have not for any period been occupied by the owner or have not for any period been let to a tenant. Read in this disjunctive manner, the literal construction of the first limb will lead to manifest absurdity and injustice and is inconsistent with the object of the Act;

(3) there is also the rule that express unambiguous language is necessary to take away existing rights;

(4) accordingly, the domestic premises have to be in the possession of the owner before it can be shown that the domestic premises have not for any period been occupied by the owner or let to a tenant.

Cases referred to:

(1) *Tinkham* v. *Perry* [1951] T.L.R. 91, 92

(2) *Khadijah binte Abdullah* v. *S.I.A. Alsagoff* [1957] M.L.J. 90, 98.

(3) *In re Cuno* (1890) 43 Ch. D. 12, 17

DISTRICT COURT APPEAL.

Aloysius Leng for the appellant.
Kirpal Singh for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): The determination of the question at issue in this appeal depends upon the true construction of the Control of Rent (Exemption) Notification, 1980 ("the Notification") which was made by the President on October 21, 1980 in

exercise of the powers conferred on him by section 30 of the Control of Rent Act ("the Act") and primarily of paragraph 2(a) of the Notification.

Section 30 of the Act reads:—

"30. The President may by notification in the Gazette except or exempt any premises or class or group of premises from the provisions of this Act, either absolutely or conditionally."

Paragraph 2(a) of the Notification (which came into operation on October 24, 1980) reads:-

"2. The following domestic premises are exempted from the provisions of the Act:—

(a) any domestic premises which (at any time after the commencement of this Notification) have not for any period been occupied by the owner or let to a tenant;"

The respondents' contention which found favour with the court below was that the words of paragraph 2(a) are plain, clear and unambiguous. Their plain meaning is that any domestic premises which, after October 24, 1980, have not for any period of time been occupied by the owner *or* which, after October 24, 1980, have not for any period of time been let to a tenant are exempted from the provisions of the Act.

If this contention is correct then the respondents are entitled to possession of 194 Kim Seng Road, Singapore ("the premises") on the undisputed facts of the case in which the appellant is the widow (in present occupation of the premises) of a deceased statutory tenant who had been for 28 years the contractual tenant of the premises which were erected before September 1947 and thus were premises subject to the provisions of the Act.

The general rule of construction is not to import into statutes words which are not found there unless it is necessary to do so. As Evershed M.R. said in *Tinkham* v. *Perry*[1] "Words plainly should not be added by implication into the language of a statute unless it is necessary to do so to give the paragraph sense and meaning in its context."

In construing paragraph 2(a) of the Notification it is unavoidably necessary, in our view, to imply the words "in the possession of the owner" after the word "Notification". Paragraph 2(a) with the italicised words implied reads thus:—

"2. The following domestic premises are exempted from the provisions of the Act:—

(a) any domestic premises which at any time after the commencement of this Notification *in the possession of the owner* have not for any period been occupied by the owner or let to a tenant;"

We now set out the reasons which ineluctably drove us to this construction of paragraph 2(a).

To qualify for exemption, it has to be shown that after October 24, 1980 the domestic premises for a period of time have not been occupied by the owner or let by him to a tenant. To show non-occupation or non-letting by the owner "for any period" after October 24, 1980, the owner necessarily has to show that in law he has been in a position to occupy or let out the domestic premises and has elected not to do so for a period of time. He has to show as a pre-condition to exemption that he has had legal possession of the domestic premises. Accordingly, the domestic premises have to be in the possession of the owner before it can be shown that the domestic premises have not for any period been occupied by the owner or let to a tenant.

A literal construction of paragraph 2(a) without the words implied will exempt any domestic premises which after October 24, 1980 have not for any period been occupied by the owner *or* have not for any period been let to a tenant. Read in this disjunctive manner, the literal construction of the first limb will lead to manifest absurdity. Any domestic premises within the Act occupied by a tenant, or a statutory tenant or a member of the family of a deceased tenant or statutory tenant after October 24, 1980 must necessarily be one which after October 24, 1980 have not since been occupied by the owner. Such a literal construction of the first limb of paragraph 2(a) must exempt all such domestic premises. If that be the true construction, the second limb of paragraph 2(a) and indeed paragraph 2(b) and the rest of the Notification are completely otiose.

A literal construction of the second limb of paragraph 2(a) could not have been intended. It is settled law that a member of the family of a deceased tenant or statutory tenant of domestic premises who resides therein is protected by the Act against an order for recovery of possession. The protected person is not defined or deemed to be a tenant under the Act. But so long as the protected person resides in the domestic premises, the courts have held that by virtue of section 16(c) of the Act he or she cannot be dispossessed. Seeing that such a protected person is not a tenant, a

literal construction of the second limb of paragraph 2(a), read disjunctively, would result in such domestic premises being exempted from the provisions of the Act as being domestic premises which after October 24, 1980 have not been "let to a tenant" and accordingly a member of the family of the deceased tenant or statutory tenant residing therein can be dispossessed.

We would repeat the observations of the late Tan Ah Tah J. in *Khadijah binte Abdullah* v. *S.I.A. Alsagoff*[2] that the cornerstone of the Act is domesticity and the protection of the home and that "by virtue of the provisions of the (Act), domestic premises are protected even though the tenant is not residing in the premises, provided that a member of his family is residing in them."

In the context of the rights of the protected person, there is also the rule of construction that express unambiguous language is necessary to take away existing rights. In *re Cuno*[3] Bowen L.J. said:

"In the construction of statutes you must not construe the words so as to take away rights which already existed before the statute was passed, unless you have plain words which indicate that such was the intention of the legislature."

In our opinion to construe paragraph 2(a) with the implied words prevents any manifest injustice or absurdity and is consistent with the object of the Act. It has to be shown that the domestic premises are in the possession of the owner and that for any period after October, 1980 the premises have not been occupied by the owner or let by him for the premises to qualify for exemption from the provisions of the Act. Where the domestic premises are occupied by a tenant, a statutory tenant or a member of the family of the tenant or a deceased tenant or statutory tenant, it cannot be shown that the owner has possession and the premises are therefore outside the exemption. Also, any domestic premises, which on October 24, 1980 are in the possession of and occupied by the owner and continues after that date to be occupied by him, are not exempted from the provisions of the Act.

However, if after October 24, 1980, the owner leaves the premises unoccupied but still retains legal possession, then by virtue of paragraph 2(a) of the Notification the premises are exempted from the provisions of the Act, i.e. de-controlled, as they are no longer occupied by him or let to a tenant "for any period" at any time after October 24, 1980. Thereafter, he is free to let the premises at an economic rent but he will also be liable to be assessed for property tax on the basis that his premises are not subject to rent control.

Accordingly, the appeal is allowed with costs.

Appeal allowed.

Solicitors: *Netto, Low and Partners; Kirpal Singh & Co.*